

Office of the Attorney General  
Educational Affairs Division  
200 St. Paul Place, 17<sup>th</sup> Floor  
Baltimore, MD 21202  
410-576-6450

May 17, 2017

**Request for Proposals to Serve as Special Outside Bond and  
Corporate/Transactional Counsel to the  
University System of Maryland, its Constituent Institutions, and  
Morgan State University,  
St. Mary's College of Maryland,  
Historic St. Mary's City Commission,  
and  
Baltimore City Community College**

**Responses are due June 28, 2017**

Dear Interested Party:

The Office of the Attorney General ("OAG") is seeking special outside bond and corporate/transactional assistant counsel ("Special Assistant Counsel" or "Contractor") to provide advice and counsel to the University System of Maryland, its constituent institutions, and Morgan State University, St. Mary's College of Maryland, Historic St. Mary's City Commission, and Baltimore City Community College and their affiliated foundations, business entities, and successors (the "Institutions" and each, an "Institution"). **Offerors are invited to submit proposals in conformance with the requirements described below by 4:00 p.m. on June 28, 2017.**

I am the sole point of contact for this request for proposals (the "RFP"). All questions about this RFP must be submitted in writing no later than **4:00 p.m. on June 9, 2017**. My email address is [jpalkovitz@oag.state.md.us](mailto:jpalkovitz@oag.state.md.us). A list of the written questions and the answers thereto will be provided to those persons who notify me (the "Procurement Officer") that they have obtained this RFP ("Prospective Offerors"). Prospective Offerors may notify me that they have received this RFP by e-mail. There will be no pre-proposal conference.

**Purpose**

The purpose of this Request for Proposals is to invite attorneys experienced in the issuance of tax-exempt, taxable, and other forms of revenue bonds, establishment of business entities, public-private partnerships, high impact economic development activity ("HIEDA"), bankruptcy, and related transactional matters, to submit proposals to the Office of the Attorney General

outlining in detail their ability to serve as Special Assistant Counsel, on an as-needed basis, to the Institutions. The Institutions are represented by the Educational Affairs Division (“EAD”) of the OAG. To varying degrees, the Institutions are authorized to issue revenue bonds, establish business entities, form public-private partnerships, undertake HIEDAs, and exercise corporate powers under the Education Article and Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland (collectively, the “Enabling Acts”). A person or entity submitting a proposal is an “Offeror.”

The Institutions cannot provide any assurances concerning the types or amounts of revenue bonds the Institutions may issue during the term of any contract which results from this Request for Proposals (“RFP”). We anticipate, however, that one or more of the Institutions will require advice and assistance in developing and structuring tax-exempt, taxable, and/or other forms of revenue bond issues which may or may not have credit enhancement, as well as new and creative or improved forms of debt and equity financings, refinancings, refundings, restructurings, entity formation, HIEDAs, or public-private partnerships. It is the intention of the Attorney General to award more than one Contract (as defined in Scope of Services below) to address the disparate legal needs of the Institutions. The Contractor(s) selected under this RFP will assist and advise members of the OAG in connection with the issuance and management of the Institutions’ revenue bonds and financial obligations (the “Bonds”). The Contractor will work closely with staff members of the Institutions, members of the OAG, the bond underwriting teams and their counsel, and other parties necessary to issue and sell the Bonds, including borrowers, bond rating agencies, financial advisors, bond insurers, letter of credit providers, trustees, and financial institutions. Requests for assistance will be evidenced by issuance of a Task Order, following completion of a conflicts check. Task Orders will be issued by the Procurement Officer and/or by other authorized Assistant Attorneys General, and with the concurrence of the Institution requesting the legal assistance, generally in the form of Attachment G.

### **Scope of Services**

Please note that an Offeror need not have experience in all areas of law covered by this RFP. Subject to the provisions of each contract for these services (“Contract”), and the terms of the Task Order issued under that Contract, each Contractor shall provide, upon request, some or all of the following services on a continuing basis throughout the term of the Contract:

#### **A. Bond Counsel:**

- (1) advise on the development and structure of bond issuances and financial transactions, including without limitation the tax and security law aspects thereof;
- (2) advise on new and improved forms of financing for the Institutions’ projects and programs, including any refinancing, refunding, or restructuring;
- (3) advise on negotiated and competitive sales of securities and dealing with underwriters, including negotiating bond purchase agreements with underwriters;
- (4) draft or participate in the drafting of the Institutions’ resolutions,

official statements, trust indentures, loan agreements, disclosure documents, and other documents relating to the issuance of the Bonds, and present them when requested to an Institution's governing board;

(5) advise on and analyze the Enabling Acts, the Internal Revenue Code of 1986, as amended, and related regulations ("the Code"), other state laws, other relevant federal, state or municipal laws, and any proposed related federal, state or local legislation or regulations;

(6) render opinions concerning the validity of the Institutions' Bonds and, if applicable, the tax-exempt, or tax-credit status of such Bonds with respect to federal, state, and local taxes, and other related matters;

(7) render supplemental opinions as the Institutions may require, including due diligence and the exemption of the Bonds from certain securities laws; and

(8) render opinions concerning the permissible investment of bond proceeds, revenues and other Institution funds.

B. Tax Counsel. The Contractor will advise the Institutions and members of the OAG on all aspects of federal and state tax law related to the issuance of the Bonds and management of the Institutions' portfolio, to include: (1) rendering opinions as described in Section A above, (2) providing current and expert advice on the application of federal and state tax law, (3) providing current and expert advice with respect to laws relating to arbitrage and arbitrage rebate, and (4) representing the Institutions in contacts with the Internal Revenue Service ("IRS") as may be requested by the OAG to administer the Institutions' bond portfolio in compliance with federal tax law. Advice is required at the time of issuance and also periodically after issuance.

C. Disclosure and Securities Law Counsel. The Contractor will advise the Institutions and members of the OAG on the application of federal and state securities laws to bond issuance, portfolio management, and secondary market disclosure, which includes: (1) issuance of opinions concerning exemption of securities from registration with the United States Securities and Exchange Commission ("SEC") and with state securities regulators, (2) ongoing advice concerning timing and adequacy of disclosure or registration requirements, (3) advice with respect to exemption from registration of trust indentures, (4) advice concerning the Institutions' disclosure practices, and (5) upon request, (i) advice to the Institutions and members of the OAG in connection with any discussions with or investigations by the SEC or state securities regulators, and (ii) assistance to the OAG in representing the Institutions in any negotiations or proceedings by the SEC or state securities regulators.

D. Credit Enhancement, Insurance and Financial Securities. Upon request, the Contractor will advise the Institutions and members of the OAG concerning the bond issuance programs of the Institutions, credit enhancements for the Bonds, lines or letters of credit, and other financing sources, structures, and opportunities. The Institutions may enter into interest rate agreements ("Swap Agreements") with different counterparties. The Institutions

may require advice regarding Swap Agreements. The Contractor will prepare and update disclosures in official statements concerning applicable programs, and assist in negotiating and closing credit enhancement facilities, lines or letters of credit, and other financing sources.

E. Program Counsel. Upon request, the Contractor will advise the Institutions and members of the OAG with respect to the Institutions' bond and financing programs, including (1) general advice regarding program structuring and administration, (2) drafting of and advice with respect to program documents, (3) advice concerning the Enabling Acts, the Maryland Economic Development Corporation ("MEDCO") Act, and other laws of the State, (4) advice concerning the granting and perfecting of valid and enforceable security interests, (5) drafting or reviewing loan agreements, entity agreements, ground leases, capital leases, subleases, contracts and other loan or contract documents relating to public private partnerships or the sale, purchase, rental or development of real property and the financing of the same, (6) advice related to such financings in areas such as antitrust, banking, bankruptcy, environmental, insurance, real estate, and other laws as applicable to the Institutions' bond and financing programs, and (6) advice related to the investment of the Institutions' bond proceeds.

F. IRS Compliance Program. Upon request, the Contractor will (1) provide advice to the Institutions and members of the OAG in connection with any audits by or requests for information from the IRS, including actions pursuant to the Tax-Exempt Bond IRS Enforcement Program, and (2) represent the Institutions in any negotiations with the IRS or any proceedings pertaining to compliance by the Institutions with federal tax laws or regulations.

G. Public-Private Partnerships. Upon request, the Contractor will advise on the development and structure of public-private partnerships and related financial transactions, advise on and analyze the Enabling Acts, draft or participate in drafting the Institutions' resolutions, loan agreements and other documents relating to the public-private partnerships, and render opinions and provide related services similar to those set forth in Section A above.

H. HIEDAs. Upon request, the Contractor will advise on the development and structure of HIEDAs and related financial transactions, advise on and analyze the Enabling Acts, draft or participate in drafting the Institutions' resolutions, loan agreements and other documents relating to HIEDAs, and render opinions and provide related services similar to those set forth in Section A above.

I. Establishment of Business Entities. Upon request, the Contractor will advise on the various available structures and relative benefits and characteristics of corporate, partnership, limited liability company, or other entity form, whether for-profit, or non-profit, in connection with public-private partnerships, HIEDAs, and any other financing or transaction.

J. Bankruptcy. Upon request, the Contractor will provide specialized expertise in bankruptcy and creditors' remedies laws to ensure that the Institutions are advised on all necessary steps to protect their financial positions in connection with a debtor's or investment partner's bankruptcy, and provide representation in adversary proceedings arising out of bankruptcy cases.

K. Other Related Services. Upon request, the Contractor will provide other related services as directed.

The Contractor will not be responsible for advice with respect to any bond issues which are in progress at any time prior to the expiration of the existing bond counsel contracts for the Institutions unless the Contractor is now bond counsel to the Institutions or has received a request to provide advice from the Chief of the Educational Affairs Division (the "Division Chief") or his/her designees. All legal services are to be provided only at the request of the Procurement Officer or the duly authorized issuer of a Task Order. All advice is to be provided directly to the Procurement Officer or individuals identified by the Procurement Officer in a Task Order.

### **General Conditions**

**Payments Under the Contract.** Special Assistant Counsel employed for this purpose will be paid an hourly fee for services rendered under the Contract(s) and shall be reimbursed for approved expenses incurred in connection with the performance of those services on the terms and conditions set forth in the Contract(s). Contractor(s) will be paid on the basis of a blended hourly rate. In addition, Assistant Attorneys General may handle all or a portion of the work.

**No Guarantee of Work.** No Contractor will be guaranteed any minimum amount of work or compensation. The Attorney General can make no assurances that any Task Orders will be issued, or that the OAG or the Institutions will require representation within the scope of this RFP, or that funds will be appropriated or otherwise made available by or to the OAG or the Institutions for payment of legal fees. Funds for payment of legal fees will be provided from funding mechanisms available to the Institutions. In addition, the OAG may seek advice from attorneys other than the Contractor with respect to any of the Institutions' activities, including matters already under a Task Order with Contractor.

**Minority Participation.** The Office of the Attorney General is an equal opportunity employer, committed to diversity in the workplace. Consistent with that commitment, the Attorney General desires that socially and economically disadvantaged individuals and minority business enterprises ("MBEs") as defined in § 14-301 of the State Finance and Procurement Article of the Annotated Code of Maryland (the "Procurement Article") have the maximum practicable opportunity to participate in the Contract(s). When permitted or required by law, the Attorney General encourages the use of socially and economically disadvantaged individuals and MBEs for contracting and subcontracting opportunities. Special Assistant Counsel should desire to promote and undertake efforts to reach out to socially and economically disadvantaged individuals and MBEs to maximize their participation in the Contract(s).

**Disclosure.** The RFP, all proposals, and the resulting contracts are subject to disclosure pursuant to the provisions of § 4-101 *et seq.* of the General Provisions Article of the Annotated Code of Maryland (the "Public Information Act"). Offerors must specifically identify those portions of their Proposals, if any, which they deem to contain confidential or proprietary information or trade secrets, and must provide justification why such materials should not, upon request, be disclosed by the State under the Public Information Act.

**ADA Compliance.** In compliance with the Americans with Disabilities Act, alternative forms of this RFP will be provided upon request.

**Expenses.** The Institutions, the Attorney General, the OAG, EAD, and the State are not responsible for any expenses you may incur in connection with developing and submitting a proposal or familiarizing yourself with relevant statutes and programs.

**Procurement Regulations.** This RFP and any Contract entered into as a result hereof is not subject to the provisions of Division II of the Procurement Article. Nonetheless, the requirements of the Procurement Article and the State procurement regulations, COMAR Title 21, as amended, will be applied to this RFP to the extent practicable and consistent with obtaining the best legal counsel for the Institutions, all as determined in the sole discretion of the Procurement Officer. The appeal procedures contained in the Procurement Article and in the State procurement regulations will not apply to this solicitation.

**Amendment or Cancellation of the RFP.** The Attorney General reserves the right to amend this RFP, and any amendments will be mailed or emailed to Prospective Offerors. **RECEIPT OF AMENDMENTS MUST BE ACKNOWLEDGED IN WRITING BY PROSPECTIVE OFFERORS.** The Attorney General also reserves the right to cancel this RFP, and notice of cancellation will be mailed or emailed to all Prospective Offerors.

**Joint Responses.** We will consider proposals submitted by joint ventures of not more than two parties (a party, for this purpose, meaning a law firm or a lawyer) so long as the joint venture arrangement meets our clients' needs. A Joint Venture is an "Offeror" and, except when otherwise expressly provided or when the context indicates otherwise, will be treated as one entity. If two persons or firms respond to the solicitation jointly, the specific services to be provided by each firm should be identified, and the Proposals should indicate how the firms expect to coordinate their work. Duplication of work by joint venturers will not be permitted.

**Acceptance of Terms and Conditions.** By submitting a Proposal (A) the Offeror accepts all of the terms and conditions set forth in this RFP including all attachments; (B) the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract; (C) the Offeror shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and if selected for award, that it shall not become so in arrears during the term of the Contract; and (D) the Offeror, if selected for award shall be deemed to have agreed to all terms and conditions set forth in the form of Contract (attached hereto as Attachment E).

Proposals submitted in response to this RFP are irrevocable for ninety (90) days following the date on which submissions are due.

**Proposal Package.** The proposal package should contain: (1) an envelope labeled "Technical Proposal – Special Outside Bond and Corporate/Transactional Counsel for the OAG, USM and its Constituent Institutions, Morgan, St. Mary's, Historic St. Mary's City

**Commission, and BCCC”** containing the original and seven (7) copies of the Technical Proposal, including the Proposal Affidavit and the Conflicts of Interest Affidavit (Attachments B and C), and (2) a separate, sealed envelope, labeled **“Price Proposal – Special Outside Bond and Corporate/Transactional Counsel for the OAG, USM and its Constituent Institutions, Morgan, St. Mary’s, Historic St. Mary’s City Commission, and BCCC”** containing the original and seven (7) copies of the Price Proposal. The Technical Proposal may not exceed fifteen pages, excluding an executed copy of the Proposal Affidavit and any attached resumes. I must receive each Proposal at my office no later than **4:00 p.m. on June 28, 2017. Requests for extensions of this closing date will not be granted. A proposal (or any part thereof) may not be submitted by facsimile or by electronic mail. Any proposal, request for modification, or request for withdrawal received after 4:00 p.m. Baltimore time on the close date is late and may not be considered. It is recommended that proposals be delivered by hand to the Procurement Officer or my assistant. Delivery will be complete only when a proposal is actually received at the OAG Educational Affairs Division, 200 St. Paul Street, 17<sup>th</sup> Floor, Baltimore, Maryland, 21202.**

**Technical Proposal.**

The Technical Proposal shall include the following information, and shall be presented in the following order: (Note: if the Offeror is a joint venture, then information relating to each joint venture should be provided.):

1. Legal name and principal place of business of the law firm. Please indicate whether the firm is an MBE.
2. Name, mailing address, email address, telephone number, and fax number for the person designated as the contact person for the purposes of this RFP and any resulting contract, and of the individual who will head the team of attorneys and other para-professionals (paralegals, legal assistants, and law clerks) participating in this engagement (collectively the “Legal Team”).
3. General information on the areas of law in which the law firm concentrates.
4. Information demonstrating the Minimum Qualifications described in Attachment A.
5. Name and address of each attorney included in the Legal Team and his or her respective position in the law firm. For each attorney, please submit a brief resume indicating relevant experience and in what jurisdictions the attorney is admitted to practice. Also for each attorney, please indicate whether the person is a member of a group defined in the Procurement Article, Section 14-301(j) or (k). Please indicate which member(s) of the Legal Team are members of the Maryland bar. Please state the availability of each attorney during the term of the contract.

Note that the Contract does not permit substitutions in the Legal Team without the prior written consent of the Procurement Officer.

6. The following information will be used to evaluate how the Offeror's experience matches up with the needs of the OAG and the Institutions. It is the intention of the Attorney General to award more than one Contract to address the disparate legal needs of the Institutions. Offerors may limit their responses to certain of the services in the list of Scope of Services without being disqualified for being unresponsive.

a. General Public Finance Experience. A detailed description of the Offeror's experience in the field of municipal or public finance and the issuance of revenue bonds. Experience should include the approximate number and size of bonds in which the Offeror has participated in the last five years, the role of the Offeror, and how many of those issues were tax-exempt.

b. Selected Public Finance Experience. Information on not more than 10 bond issues within the past five years that best demonstrate the Offeror's capabilities to perform the services required under the Contract, including the following information regarding each issue: (1) the type (e.g., revenue, general obligation, tax-exempt, tax-credit or taxable bonds, etc.); (2) the name of the issuer; (3) the date and size of the issue; (4) private placement versus public issue; (5) the party represented (e.g., issuer, lender, bond purchaser, underwriter, borrower, municipality); and (6) the range of responsibilities, including the drafting of documents and participation as bond counsel (including whether the participation was as sole bond counsel or as co-bond counsel), special tax counsel, or disclosure counsel.

c. Creative Solutions. At least one, but not more than four, examples of creative or innovative techniques or solutions to legal or financing problems developed or put forth in the last five years by the Offeror in connection with a revenue bond financing, public-private partnership and/or HIEDA, and a brief description of the Offeror's involvement.

d. Tax Experience. A description of the nature and depth of the Offeror's experience with tax laws, with particular reference to the tax aspects of revenue bonds.

e. Maryland Public Finance Experience. A list of all State agencies and political subdivisions for which the Offeror has served as bond counsel or other counsel during the last five years, identifying in what capacity the Offeror served.

f. Public-Private Partnership and HIEDA Experience. A description of the nature and depth of the Offeror's experience with the Enabling Acts and public-private partnerships and HIEDAs.

g. Bankruptcy Experience. A description of the nature and depth of the Offeror's experience in bankruptcy and creditors' remedies law.

h. Related Legal Experience. A brief description of the Offeror's experience in areas of the law related to public finance and the granting and perfecting of valid and enforceable security interests, including antitrust, banking, bankruptcy, environmental, insurance, securities, real estate, entity formation, public-private partnerships, HIEDAs, and legislation. You may attach brief resumes of the attorneys who work in the areas described



above, but only if they will be available to consult with and give advice to the Institutions during the term of the Contract.

7. Information on how you plan to use para-professionals, permanent law clerks, and law graduates not admitted to practice to promote economy and efficiency in the performance of the Contract and to assure the lowest possible costs under the Contract.
8. Names, email addresses, and telephone numbers of three (3) clients (and respective contact persons for those clients) for whom you have provided services similar to those described in this RFP, with a brief description of the work performed. These persons will be references for your Technical Proposal.
9. Names, email addresses, and telephone numbers for contact persons at any units of the State for whom you have provided legal counsel in the last three (3) years. These persons also will be references for your Technical Proposal.
10. The proposal should state whether there are any actual or potential conflicts in representing the Institutions or this Office and, if so, should describe those conflicts and how they would be resolved. Please also provide a detailed description of the firm's procedure for checking conflicts of interest. Please run and include the results of a preliminary conflicts check with your proposal and please note that conflicts checks will be requested prior to the issuance of a Task Order.
11. A statement addressing the firm's minority business enterprise status and which members of the Legal Team meet the definition of socially and economically disadvantaged individual, as defined in the Procurement Article.
12. An executed Proposal Affidavit (Attachment B) and an executed Conflict of Interest Affidavit (Attachment C).
13. The name and address of the firm's professional liability insurance carrier that has issued or will issue professional liability insurance (effective as of the commencement date of the Contract) that meets the minimum requirements for insurance set forth in this RFP.
14. A Proposal by a joint venture must specify the division of responsibilities between the entities, including approximate amount of work to be performed by each party, the approximate percentage of time each party expects to devote to performing services for the OAG and/or the Institutions, and how advice will be rendered by you. Also please discuss the safeguards that will be employed to avoid duplication of effort by members of the joint venture.
15. Any other information which you consider essential to a fair evaluation of your firm's experience and capabilities.
16. Written affirmation that the person(s) submitting the proposal is/are authorized to do so on behalf of the firm and certification that, to the best of his or her knowledge, the

information submitted in the Technical Proposal is accurate, complete, and correct as of the date of the Technical Proposal.

Evaluation of the Technical Proposals will be as described below.

### **Price Proposal**

The Price Proposal shall be submitted using the form attached as Attachment D, must be in a separate sealed envelope, and shall contain the following information:

1. The one blended hourly rate that will be charged for all attorneys rendering services under the contract; and
2. The one blended hourly rate that will be charged for para-professionals (paralegal and legal assistants) rendering services under the Contract.
3. In addition, we would appreciate knowing what billing alternatives you make available to provide value and help clients achieve efficiencies.

Price will be an important factor in the selection process but not necessarily the determining factor.

### **Evaluation and Selection**

We reserve the right to meet with qualified Offerors to discuss this RFP and the Offeror's proposal and ability to perform the proposed contract. We anticipate meeting qualified Offerors during the week of July 17, 2017 at the Office of the Attorney General, 200 St. Paul Street, Baltimore, Maryland. If you are not available during this time, or if certain times are more convenient, please so indicate in your Technical Proposal. We will try to accommodate your needs. The meeting will be approximately one to two hours, will be informal and will include substantive questions. PowerPoint presentations are not encouraged. Technical proposals and oral presentation will be evaluated before price proposals are opened. After reviewing the price proposals, there may be additional discussions with Offerors, including a request for best and final offers. The following evaluation factors will be used and are listed in the order of relative importance:

a. Experience: An evaluation of the quality and quantity of the Offeror's significant experience and expertise in the areas of tax-exempt, taxable, and other forms of revenue bonds, establishment of business entities, bankruptcy, public-private partnerships, and HIEDA law and related areas of the law as required by this RFP, with emphasis on prior experience and expertise of Offeror's team as a whole. We will consider the written Technical Proposal as well as any oral presentation. Lack of experience in any particular area will not necessarily disqualify or prejudice an otherwise well-qualified Offeror's chances of being awarded a Contract.

b. Legal Team (Specific Individuals Responsible for Performance of Contract): The qualifications, expertise, and general reputation of the individuals who will be responsible for the

performance of the Contract as required by this RFP will be evaluated. Included in this evaluation will be the Legal Team's expertise in the field of tax-exempt, taxable, and other forms of revenue bonds, establishment of business entities, bankruptcy, public-private partnerships, and HIEDAs. The Legal Team's availability for consultation and advice during the term of the Contract will also be evaluated. Each Offeror is expected to demonstrate knowledge of the topics described in this RFP.

c. Price: The Offeror's proposed blended hourly rates of compensation for services to be performed by attorneys and para-professionals and the reasonableness of the Offeror's total compensation for services in relation to the services performed as required by this RFP will be evaluated.

d. Conflicts: An evaluation of the Offeror's method of resolving conflicts or potential conflicts.

e. Minority Participation: An evaluation of the extent and quality of the proposed participation by socially and economically disadvantaged individuals and minority business enterprises, to the extent permitted by law.

f. Any other factors that the Attorney General deems to be relevant.

Contract award(s) will be made to the Offeror or Offerors whose proposal contains the combination of those criteria offering the best overall value to the Attorney General and the Institutions. Selection of Special Assistant Counsel will be solely the decision of the Attorney General, and this Office reserves the right to reject any and all proposals, to waive informalities and minor irregularities in proposals, and to negotiate with any or all Offerors. The Attorney General may select the successful Offeror or Offerors on the basis of initial written proposals without discussions with Offerors, and without requesting a best and final offer, so please take care in submitting your technical and price proposals.

A successful Offeror will be required to complete a Contract Affidavit in the form attached hereto as Attachment F at the time of execution of the Contract entered into as a result of the RFP. The form of the Contract a successful Offeror will be expected to execute is attached hereto as Attachment E. An executed Contract Affidavit should not be submitted with an Offeror's proposal.

### **Conflicts of Interest**

If a conflict of interest arises with respect to a particular matter, the Contractor must be willing to seek a waiver of the conflict from other existing or potential clients that will allow the Contractor to represent the State in that matter. The Procurement Officer reserves the right, in his or her sole discretion, to refuse to waive a conflict or to select another lawyer or law firm to represent the State and/or the OAG in a particular matter if a conflict is not resolved to the satisfaction of the Attorney General. Conflicts may arise not only from attorneys named on a Contract, but also from activities on the part of any other member of the firm, regardless of whether that attorney is in the same office or a branch office.

The Contract will require the Contractor to examine its client/matter listings carefully before entering into a Task Order as well as on a periodic basis, to notify the Task Order Attorney immediately of any potential conflict of interest, and to undertake immediate action to eliminate it. The Procurement Officer reserves the right to make the Contractor aware of situations which may present a conflict of interest and to require the Contractor to remedy the situation promptly and to the satisfaction of the Procurement Officer and the Attorney General.

The Maryland Lawyers' Rules of Professional Conduct govern what is and is not a conflict of interest. In applying those rules and deciding whether to waive any conflicts, the OAG is conscious that an aggressive approach of asserting conflicts may have a chilling effect on the ability of the OAG to retain outside counsel. While the OAG decides these issues based upon the specific facts and circumstances on a case by case basis, as a general matter, the Office probably will not assert that a conflict exists, or will waive a conflict, if the subject matter of the other matter is unrelated to the subject matter on which the lawyer has been retained by the State.

If you have any questions, please submit them to me in writing by June 9, 2017, as noted in the initial paragraph of this letter. Thank you for your interest.

Very truly yours,

*Jeffrey C. Palkovitz*

Jeffrey C. Palkovitz,  
Assistant Attorney General  
Senior Counsel for Real Estate  
Office of the Attorney General  
Educational Affairs Division

#### Attachments

- A – Minimum Qualifications
- B -- Proposal Affidavit (to be completed and returned with Technical Proposal)
- C – Conflict of Interest Affidavit (to be completed and returned with Technical Proposal)
- D – Price Proposal Form (to be completed and returned in separate sealed envelope)
- E - Form of Contract
- F – Form of Contract Affidavit
- G – Sample Task Order

## **Attachment A**

### **Minimum Qualification**

1. At least one principal of the Offeror must be admitted to practice law in the State of Maryland.
2. The Offeror must have an office in the State of Maryland or within fifty miles of the University System of Maryland's headquarters in Adelphi, Maryland.
3. In order to meet the Attorney General's standards for production and electronic transmission of documents, the Offeror must have the capacity to create complex documents, electronically transmit and receive complex documents and data, and share documents in a format compatible with the format and/or software used by the Office of the Attorney General.
4. The Offeror, and the members of its Legal Team, must have a minimum of five (5) years' experience in tax-exempt and taxable financing bonds, establishment of business entities, with experience in public-private partnerships, HIEDA, and bankruptcy matters. Please note that an Offeror need not have experience in all areas of law covered by this RFP.

## **Attachment B**

### **Proposal Affidavit**

(Authorized Representative and Affiant)

#### **A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_(title) and duly authorized representative of \_\_\_\_\_(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

#### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### **B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES**

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its Bid/Proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

#### **B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this article;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by State Finance and Procurement Article §14-605; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of State Finance and Procurement Article §14-605.

## C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has been convicted of, or has had probation before judgment imposed pursuant to Section 6-220 of the Criminal Procedure Article, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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## D. AFFIRMATION REGARDING OTHER CONVICTIONS

### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under a state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;



(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

- (a) §7201, Attempt to Evade or Defeat Tax;
- (b) § 7203, Willful Failure to File Return, Supply Information, or Pay Tax
- (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information
- (d) §7206, Fraud and False Statements, or
- (e) §7207, Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States.

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

- (a) A Court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

- (a) A Court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The Finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated Title 3, Subtitles 3, 4, or 5, or Title 5 of the Labor and Employment Article, , Annotated Code of Maryland, if:

- (a) A Court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The Finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceeding, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in sections B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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#### E. AFFIRMATION REGARDING DEBARMENT

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

##### I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article, Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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#### G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article, Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a *bona fide* employee, *bona fide* agent, *bona fide* salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not

paid or agreed to pay any person, partnership, corporation, or other entity, other than a *bona fide* employee, *bona fide* agent, *bona fide* salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with Section 17-705 of the State Finance and Procurement Article, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in Section 17-705 of the State Finance and Procurement Article, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in Section 17-705 of the State Finance and Procurement Article, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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#### L. CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of Section 14-413 of the State Finance and Procurement Article, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries, as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

#### N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of (1) the State of Maryland, (2) counties or other subdivisions of the State of Maryland, (3) other states, and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the

exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

Date: \_\_\_\_\_

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

## **Attachment C**

### **Conflict of Interest Affidavit and Disclosure**

A. “Conflict of Interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance of advice to the State, or a person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B(64) and includes the offeror, contractor, consultant, subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The Offeror warrants that, except as disclosed in section D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

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E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the EAD Chief of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the contractor shall continue performance until notified by the Contract Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

## Attachment D

### Form of Price Proposal

Name of Offeror: \_\_\_\_\_

Address of Offeror: \_\_\_\_\_

In response to the Request for Proposals for Bond and Corporate/Transactional Counsel to represent the University System of Maryland, Morgan State University, St. Mary's College of Maryland, Historic St. Mary's City Commission, and Baltimore City Community College, Offeror submits the following Price Proposal:

I) The following are the fixed blended hourly rates offered during the initial term of the Contract:

- a) all attorneys rendering services \$\_\_\_\_\_
- b) para-professionals, paralegals, and legal assistants \$\_\_\_\_\_

II) The following are the blended hourly rates offered during any extensions of the term of the Contract:

- a) all attorneys rendering services \$\_\_\_\_\_
- b) para-professionals, paralegals, and legal assistants \$\_\_\_\_\_

(In the event fixed blended hourly rates are offered only for the initial term of the Contract, those rates shall apply for the entire term of the Contract, including any extensions.)

The undersigned certifies for the Offeror that he or she is authorized to sign this Price Proposal and, to the best of his or her knowledge, the information submitted in this Price Proposal in response to the Request for Proposals is accurate, complete, and correct as of the date set forth below.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment E**

**Form of Contract**

**ASSISTANT BOND AND CORPORATE/TRANSACTIONAL COUNSEL CONTRACT  
WITH THE  
ATTORNEY GENERAL OF THE STATE OF MARYLAND ON BEHALF OF THE  
UNIVERSITY SYSTEM OF MARYLAND AND ITS CONSTITUENT INSTITUTIONS,  
MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND,  
HISTORIC ST. MARY'S CITY COMMISSION AND BALTIMORE CITY  
COMMUNITY COLLEGE  
CONTRACT NO. OAG-EAD-\_\_\_\_\_**

This contract (the "Contract") is made by and between the Attorney General of the State of Maryland (the "Attorney General") for the use of the above-mentioned public institutions of higher education and Historic St. Mary's City Commission ("HSMCC"), and affiliated foundations and business entities (individually, the "Institution" or collectively, "Institutions") of the State of Maryland (the "State") and \_\_\_\_\_, (the "FIRM").

**WHEREAS**, the Institutions, established under the Education Article of the Maryland Annotated Code, anticipate that from time to time they might issue tax-exempt, taxable, and other forms of revenue bonds, establish business entities, enter into public-private partnerships and High Impact Economic Development Activities ("HIEDA"); and

**WHEREAS**, the Institutions, from time to time, have the need for specialized legal services relating to tax-exempt, taxable, and other forms of revenue bonds, establishment of business entities, public-private partnerships, HIEDAs, and bankruptcy and creditors' remedies, including advice, consultation, and, if requested, representation; and

**WHEREAS**, these present issues require skill and experience in the highly specialized fields of law; and

**WHEREAS**, the FIRM is well versed in these areas of the law; and

**WHEREAS**, it is the intention of the Attorney General to employ the FIRM on a three-year basis on the terms set forth in this Contract, with two one-year options, to be exercised by the Attorney General solely within his discretion.

**NOW, THEREFORE, THIS CONTRACT WITNESSETH:**

That for and in consideration of the covenants and conditions herein contained, the receipt and sufficiency of which both parties hereby acknowledge, the parties hereto agree as follows:



## **ARTICLE I** **CONTRACT**

A. Contract Documents. This Contract consists of the matters identified in this Article I (“Contract Documents”), all of which are part of this Contract as if fully set forth herein (all as amended from time to time):

1. This Contract;
2. Request for Proposals for Special Outside Bond and Corporate/Transactional Counsel dated May 17, 2017 (“RFP”);
3. Contract Affidavit (the “Affidavit”);
4. Written task orders issued under the Contract (“Task Order”); and
5. FIRM’s Technical Proposal, including the Proposal Affidavit, dated \_\_\_\_\_, 2017 and the FIRM’s Price Proposal dated \_\_\_\_\_, 2017 (the Technical Proposal and the Price Proposal collectively being the “Proposal”; the RFP and the Proposal collectively being the “Solicitation Documents”);

If there are any inconsistencies between or among the Contract Documents, the following order of precedence shall determine the prevailing provision: this Contract, the RFP, Affidavit, Task Orders and the Proposal.

The obligations, representations, terms and conditions set forth in the Solicitation Documents and the Affidavit are provisions of this Contract and are supplemental to the provisions set forth here.

B. Contract Term. The Contract shall be for a term of three (3) years, and shall commence on \_\_\_\_\_, 2017 (the “Commencement Date”) and shall expire on the later of (a) three (3) years after the Commencement Date (the “Expiration Date”), or (b) upon completion of all work authorized by Task Order(s) issued on or before the Expiration Date, unless renewed or sooner terminated in accordance with this Contract. At the option of the Attorney General, this Contract may be continued for two (2) one-year terms. The Contract Officer (defined below) shall notify the FIRM of the Attorney General’s exercise of the option for each one (1) year extension prior to the termination of the then current term. Such extension shall be on the same terms and conditions as herein provided (except for any increase in blended hourly rates as set forth in the FIRM’s Price Proposal).

## **ARTICLE II** **EMPLOYMENT**

The FIRM asserts that it is thoroughly qualified and familiar with all required duties and responsibilities and is prepared to discharge the same fully and properly on an independent contractor basis.

## **ARTICLE III** **SCOPE OF SERVICES**

A. The general scope of work for this Contract is set forth in the Contract Documents, collectively. The FIRM shall serve as Special Outside Bond and Corporate/Transactional Counsel for and on behalf of the Institutions, and shall perform the services described in the RFP and in any Task Order issued under this Contract. The FIRM shall provide these services in accordance with the terms and conditions of this Contract and any written Task Order (“Task Order”) issued hereunder. The Attorney General shall have the unilateral right to require changes in the scope of services in this Contract and any issued Task Order, provided such changes are within the general scope of the work to be performed.

B. The FIRM shall perform services for a specific Institution only after receipt of a written Task Order substantially in the form of Attachment D. The FIRM shall familiarize itself with the Institution’s programs without cost to the Institution, the Attorney General, or the State.

C. All services are to be provided only at the request of the Contract Officer or a Task Order Officer. The FIRM may not devote time to any or all of the services to be performed, or incur expenses, absent the prior authorization of the Contract Officer or a Task Order Officer. The FIRM is not authorized generally to enter into discussions with the Institution’s personnel, nor with its customers, clients or other advisors. The Contract Officer and/or a Task Order Officer may, at any time, by written order, make changes in the work within the general scope of the Task Order, but no such change may require work outside the scope of work for this Contract.

## **ARTICLE IV** **COMPENSATION**

A. INVOICES. At the end of each month, the FIRM shall prepare, for each Task Order it has received, a separate invoice setting forth the amount to be paid thereunder and bearing the following statement: “Certified just and correct and payment not received.” Said invoice must be prepared and signed by the FIRM and delivered or mailed to the Task Order Officer identified in the Task Order for validation and approval. The invoice will indicate the date of services rendered, a full description of the services rendered and complete time records (and any coding symbols necessary to interpret the records), indicating the name and position of the attorney, para-professional, paralegal, and legal assistant, the billing rate being charged, and the hours of time (or fraction of hours) spent by each such individual performing such work

under this Contract. The invoice shall be submitted in such detail as to permit easy corroboration with the FIRM'S office records, such records to be made available for inspection by representatives of the Attorney General, the Institution(s) and/or any auditors acting on their behalf upon reasonable notice. All invoices for services rendered shall be subject to the review and approval of the Task Order Officer. Each invoice shall indicate the FIRM'S Federal Tax Identification Number. The FIRM'S Federal Tax Identification Number is \_\_\_\_\_ [both identification numbers to be included if the FIRM is a joint venture]. In addition, such records shall be available to the Task Order Officer, the Contract Officer, the Attorney General or his designee and any auditors acting on their behalf, at all reasonable times during the term of the Contract and for a period of three (3) years after the termination of the Contract.

B. PAYMENT. Payment for all services performed by the FIRM will be as follows:

1. Fees:

a. The fixed blended hourly rate of compensation for the attorneys performing services under this Contract shall be \_\_\_\_\_ per hour. The fixed hourly rate of compensation for each para-professional, paralegal and legal assistant performing services under this Contract shall be \_\_\_\_\_ per hour.

b. The fixed blended hourly rate of compensation for the attorneys performing services under any extensions under this Contract shall be \_\_\_\_\_ per hour. The fixed hourly rate of compensation for each para-professional, paralegal and legal assistant performing services under any extensions under this Contract shall be \_\_\_\_\_ per hour.

c. The hourly rates constituting the fees, as set forth above, shall be the full compensation, except as provided in Section 2 below, "Reimbursable and Non-Reimbursable Expenses," for performance of all basic services.

d. No compensation will be permitted for law clerks.

2. Reimbursable and Non-Reimbursable Expenses:

a. The FIRM shall be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the FIRM in the performance of the services hereunder which shall include, but not be limited to costs of:

- (i) Travel expenses, including transportation, meals and lodging at the rates set in the State's standard travel regulations, as amended from time to time, but excluding telephone calls, facsimile costs and travel between the Institution(s) or the Office of the Attorney General ("OAG") offices and the FIRM;
- (ii) Postage and messenger or overnight delivery services;
- (iii) Long-distance telephone calls, and telefax costs to be reimbursed at actual cost;

- (iv) Extraordinary photocopying costs may be reimbursed only with the prior written approval of the Contract Officer or his designee; and
  - (v) Any other costs incurred may be reimbursed only with the prior written approval of the Contract Officer or his or her designee.
- b. The FIRM shall not be reimbursed for indirect costs such as:
- (i) secretarial services;
  - (ii) preparation and review of billings;
  - (iii) in-house messenger services;
  - (iv) para-professional overtime costs;
  - (v) long-distance telephone or other communication services between joint venturers in a Contract, if any; and
  - (vi) electronic legal research.

Non-reimbursable expenses may not be recovered indirectly through charges for hours worked.

**ARTICLE V**  
**PROCUREMENT OFFICER; CONTRACT OFFICER; TASK ORDER**  
**OFFICER**

The Procurement Officer and the Contract Officer for the Contract is Jeffrey C. Palkovitz, Assistant Attorney General and Senior Counsel for Real Estate in the Division of Educational Affairs, or such other person designated by the Attorney General. The Task Order Officer shall be the Assistant Attorney General named in each issued Task Order.

**ARTICLE VI**  
**EXCLUSIVE AGREEMENT**

A. This Contract, together with the Attachments hereto, constitutes the entire agreement between the parties. Any other communications between the parties before the execution of the Contract, whether written or oral, with reference to the subject matter of the Contract, are superseded by the agreements contained herein.

B. The parties expressly acknowledge that this Contract is the product of mutual negotiations, and intend that neither party shall be construed to be the primary drafter thereof, and no provisions of this Contract may be changed, modified, amended, or altered except by written instrument executed by the parties hereto and approved by the Contract Officer. A Task Order shall not be deemed to be a modification to the Contract.

## **ARTICLE VII** **GOVERNING LAW**

Maryland law shall govern the Contract, including any Task Orders. Any disputes arising under this Contract, including any Task Orders, shall be brought in a Court located in the State of Maryland.

## **ARTICLE VIII** **NONDISCRIMINATION**

The FIRM shall comply with all applicable federal and State laws, rules and regulations and the policies and procedures of the OAG and the State involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, ancestry, age, gender, or disability of a qualified individual with a disability.

## **ARTICLE IX** **FIRM RESPONSIBILITIES**

During the term of the Contract, the FIRM shall:

- A. Assume sole responsibility for all work to be performed under the Contract;
- B. Perform the services with the standard of care, skill, and diligence normally provided by nationally recognized legal counsel in the performance of services similar to the services to be performed hereunder;
- C. Not make any changes in the designation of the identities or relative responsibilities of the attorneys identified in the Request for Proposals without the prior written consent of the Contract Officer or his designees. Any changes without the prior written consent of the Contract Officer or designees may be deemed an event of default by the FIRM under the Contract.
- D. Prosecute the work continuously and diligently, and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- E. The FIRM confirms that it is thoroughly qualified and familiar with all required duties and responsibilities and will discharge the same diligently, fully, and properly, on an independent contractor basis, and in accordance with all ethical and professional duties and obligations.

## **ARTICLE X** **SUBCONTRACTING**

The FIRM shall not subcontract, in whole or in part, for any of the services to be performed under this Contract without the prior written consent of the Attorney General or his

designee and the Contract Officer or his designee, which is in their sole discretion.

## **ARTICLE XI** **NON-ASSIGNABILITY**

The FIRM shall not assign, in whole or in part, any of the services to be performed under this Contract without the prior written consent of the Attorney General or his designee and the Contract Officer or his designee, which is in their sole discretion.

## **ARTICLE XII** **DISSEMINATION OF INFORMATION**

During the term of the Contract, the FIRM, without the prior written consent of the Contract Officer or the applicable Task Order Officer, (a) shall not (and shall not permit its agents or employees to) release, disseminate, publish, distribute or circulate, in any manner whatsoever, any information, data, documents or materials related to the services or performance of the services under the Contract or to the Contract, and (b) shall not publish any final reports or documents. The products of the efforts of the FIRM shall become and remain property of the Attorney General, and the FIRM will, at all times, keep the Contract Officer and/or the applicable Task Order Officer informed of efforts and progress made in the performance of its duties, or any other such duties as may be assigned.

## **ARTICLE XIII** **CONTINGENT FEE PROHIBITION**

The FIRM warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent working for the FIRM to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent, any fee or other consideration contingent on the making of this Contract. For breach or violation of this warranty, the Attorney General shall have the right to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **ARTICLE XIV** **ITEMIZATION OF EXPENSES AND RETENTION OF RECORDS**

A. The FIRM shall maintain, for each individual attorney and para-professional performing services on behalf of the FIRM under this Contract, complete time records pertaining to and documenting the Contract services. A summary of the time records (and any coding symbols necessary to interpret the records) indicating the name of the attorney or para-professional, the services rendered, the hourly rate being charged, and the amount of time spent by each such individual performing work, shall be available to the Task Order Attorney, the Contract Attorney, the Institution(s), and any auditor acting on their behalf, at all reasonable times during the term of this Contract and for a period of three (3) years after the termination of

this Contract.

B. The FIRM shall maintain all records and documents (including information stored by electronic means) relating to this Contract for three (3) years after final payment hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Contract Officer or his designee, at all reasonable times. In the event of any audit, the FIRM shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies or variances. This section shall survive the expiration of the Contract.

## **ARTICLE XV**

### **COST AND PRICE CERTIFICATION**

The FIRM has submitted cost or price information and certifies that, to the best of its knowledge, the information submitted is accurate, complete and current as of the Commencement Date. The prices under the Contract or any Contract modification, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the FIRM furnished cost or price information that, as of the Commencement Date, was inaccurate, incomplete or not current.

## **ARTICLE XVI**

### **MANDATORY DISCLOSURE**

The FIRM shall comply with § 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies and receives in the aggregate \$100,000 or more during the calendar year shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## **ARTICLE XVII**

### **PROFESSIONAL LIABILITY INSURANCE**

A. The FIRM shall maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$5 million (the "Insurance Amount") to include coverage for the services to be performed hereunder. The FIRM agrees that thereafter it shall maintain, for the entire period in which it and each of its attorneys (subject to any applicable statute of limitations) may incur any professional liability in connection with the performance or failure to perform services under the Contract, professional liability insurance in the aggregate amount of not less than the Insurance Amount.

B. If the FIRM is a joint venture, and one party to the joint venture does not have such liability insurance, this requirement may be satisfied if the co-venturer with the liability insurance provides assurances of indemnity, satisfactory to the Procurement Officer or his designee, that it

will be liable for the performance of the other co-venturer.

C. The FIRM shall purchase and maintain during the term of the Contract, and shall upon Contract award provide to the Procurement Officer, evidence of its current insurance policies in effect for its professional liability coverage and for all other coverage required by the RFP.

D. The FIRM shall not commence work under the Contract until evidence of all the insurance coverage has been reviewed and approved by the Procurement Officer.

E. The FIRM shall not alter or change, reduce the limit of liabilities, cancel or non-renew, any of the required insurance coverage without sixty (60) days prior written notice of same to the Contract Officer, and shall maintain all coverage until it receives notice from the Procurement Officer that Contract services have been completed.

## **ARTICLE XVIII** **CONFLICTS**

A. The FIRM acknowledges that it has performed a preliminary conflicts check for each of the Institutions and for the OAG, and has shared the results with the Contract Officer. The FIRM further acknowledges that it has verified that entering into this Contract will not trigger the occurrence or the continuation of a violation of Title 5 of the General Provisions Article of the Annotated Code of Maryland (the "Public Ethics Law").

B. The FIRM agrees that during the term of this Contract it will not provide services to any party whose interests are in conflict with the subject matter of a duly issued task order, nor will the FIRM permit the occurrence or the continuation of a violation of the Public Ethics Law in connection with this Contract.

C. The FIRM agrees to check for potential conflicts, including those covered by the Public Ethics Law, and provide the OAG with the results of its conflicts check, on a task order, matter-specific, basis prior to the FIRM's acceptance of a task order of that matter. The FIRM also agrees to examine its client/matter listings carefully on a periodic basis, to notify the Contract Officer and the applicable Task Order Officer immediately of any potential conflict of interest, and, if requested, to undertake immediate action to eliminate the source of the potential conflict of interest.

D. The Contract Officer and/or Task Order Officer reserves the right to make the FIRM aware of situations in which they believe the FIRM is involved that may present a conflict of interest and/or a violation of the Public Ethics Law and to request that the FIRM promptly remedy the situation. The Contract Officer and the OAG reserve the right, to the extent permitted by the Maryland Lawyers' Rules of Professional Conduct, to request that the FIRM withdraw from the representation of parties whose interests are adverse to the State, the OAG or the Institution(s), notwithstanding the FIRM's receipt of a requested conflicts waiver or original report of no conflict. The FIRM hereby further acknowledges and agrees that the Contract



Officer and the OAG reserve the right to select another law firm as counsel to represent the State and the Institution(s) in a particular matter if the conflict of interest is not resolved to the satisfaction of the Contract Officer and/or the Attorney General.

## **ARTICLE XIX** **COMPLIANCE WITH LAW**

The FIRM hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws applicable to its activities and obligations under this Contract; and

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **ARTICLE XX** **NON-HIRING OF EMPLOYEES**

No official or employee of the State of Maryland, as defined under Section 5-101 of the General Provisions Article, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and, while serving as an official or employee of the State, become or be an employee of the FIRM or any approved subcontractor of the FIRM.

## **ARTICLE XXI** **TERMINATION AND SUSPENSION**

A. TERMINATION OF CONTRACT AND/OR TASK ORDER ASSIGNMENT FOR DEFAULT. If the FIRM fails to fulfill its obligations under the Contract and/or under an issued Task Order properly and on time, is unable to continue staffing the Contract and/or an issued Task Order as set forth in the Proposal, or otherwise violates any provisions of the Contract and/or an issued Task Order, the Attorney General may terminate the Contract and/or an issued Task Order by written notice to the FIRM. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the FIRM shall, at the Attorney General's option, become the property of the Attorney General, provided the sums, if any, due to the FIRM pursuant to this clause have been paid. The

Institution(s) will pay the FIRM: (a) fair and equitable compensation (based upon the rates of compensation described in Article IV hereof) for satisfactory performance prior to receipt of notice of termination; and (b) all reasonable expenses incurred by the FIRM prior to receipt of such notice, less the amount of damages caused by FIRM's breach. If the damages are more than the compensation payable to the FIRM, the FIRM shall remain liable after termination and the Attorney General or the Institution can affirmatively collect damages.

B. TERMINATION OF CONTRACT AND/OR TASK ORDER FOR CONVENIENCE. The performance of work under this Contract and/or under an issued Task Order may be terminated by the Attorney General in accordance with this clause in whole, or from time to time in part, whenever the Attorney General shall determine that such termination is in the best interest of the Attorney General, the Institution(s) or the State. The Institution(s) will pay the FIRM: (a) compensation for services performed prior to the date of termination based upon the rates set forth in Article IV hereof and (b) all reasonable expenses incurred by the FIRM prior to such date of termination.

C. TERMINATION OF MULTI-YEAR CONTRACT. If funds are not appropriated or if funds are not otherwise made available for the continued performance of this Contract or any Task Order issued hereunder at any time during the Contract term, this Contract or the Task Order issued hereunder, as the case may be, shall be canceled as of the time for which funds were not appropriated or otherwise made available; however, this will not affect the Attorney General's rights or the Institutions' rights under any other termination clause of this Contract. The effect of termination of this Contract or any Task Order hereunder pursuant to this Article XXI- C will be to discharge the FIRM, the applicable Institution(s) and the Attorney General from future performance of this Contract, or a Task Order issued hereunder as the case may be, but not from their obligations existing at the time of termination. The applicable Institution(s) shall pay the FIRM: (a) compensation for services performed prior to the date of termination based upon the rates set forth in Article IV hereof, and (b) all reasonable expenses incurred by the FIRM prior to such date of termination. The Attorney General shall notify the FIRM within 30 days prior to the termination of the Contract pursuant to this Section of the Contract; an Institution, after consulting with the Contract Officer, shall notify the FIRM within 30 days prior to the termination of a Task Order issued hereunder.

D. SUSPENSION. The Contract Officer and/or a Task Order Officer unilaterally may order the FIRM in writing to suspend, delay, or interrupt all or any part of any assigned work for such period of time as he or she may determine to be appropriate for the convenience of an Institution or the State.

## **ARTICLE XXII** **INDEMNIFICATION**

A. The Firm, within the limitations of the Maryland Lawyers' Rules of Professional Conduct, shall indemnify and hold harmless the Attorney General, the Institutions, and the State and their respective officers, agents, contractors, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs (including reasonable attorneys' fees) of every name and description, arising out of or resulting from the performance

of the services of the FIRM under the Contract or a breach of any or all of the FIRM's obligations under this Contract.

B. The Attorney General, the Institutions, and the State have no obligation to provide legal counsel or defense to the FIRM in the event that a suit, claim, or action of any character is brought by any person against the FIRM as a result of or relating to the FIRM's obligations under this Contract.

C. The Attorney General, the Institutions, and the State have no obligation for the payment of any judgments or the settlement of any claims against the FIRM as a result of or relating to the FIRM's obligations under this Contract.

D. The Attorney General, the Institutions, and the State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance of this Contract.

E. The FIRM shall immediately notify the Contract Officer and any Task Order Officer of any claim or suit made or filed against the FIRM resulting from or relating to the FIRM's obligations under the Contract, and will cooperate, assist, and consult with the Attorney General, the affected Institution(s) and the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the FIRM's performance under this Contract.

### **ARTICLE XXIII**

### **CORRECTION OF ERRORS, DEFECTS AND OMISSIONS**

The FIRM agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to the Attorney General, the Institutions or the State. The acceptance of the work set forth herein by the Attorney General or his designee shall not relieve the FIRM of the responsibility of subsequent correction of such errors.

### **ARTICLE XXIV**

### **ANTI-BRIBERY**

The FIRM is required to be aware of §§ 16-201 *et seq.* of the State Finance and Procurement Article, Annotated Code of Maryland, which require that any person convicted of bribery, attempted bribery, or conspiracy to bribe, in the obtaining of a contract from the State of Maryland or any of its subdivisions be subject to disqualification pursuant to §§ 16-201 *et seq.* of the State Finance and Procurement Article, from entering into a contract with the State of Maryland, or any county or subdivision of the State of Maryland, for the supply of materials, equipment, or services by the person.

**ARTICLE XXV**  
**ANTI-BRIBERY, NON-COLLUSION AND**  
**FINANCIAL DISCLOSURE AFFIDAVIT**

See Attachment B (Proposal Affidavit) attached hereto and made a part hereof.

**ARTICLE XXVI**  
**POLITICAL CONTRIBUTION DISCLOSURE**

The FIRM shall comply with the provisions of the Election Law Article, §§ 14-101 through 14-108 of the Annotated Code of Maryland, which require that every person who entered into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person received in the aggregate of \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (1) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**ARTICLE XXVII**  
**DRUG- AND ALCOHOL-FREE WORKPLACE**

The FIRM certifies that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Contract. Specifically, the FIRM shall:

- A. prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace;
- B. prohibit its employees from working under the influence of alcohol or drugs;
- C. not hire or assign to work on an activity funded in whole or in part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a *bona fide* rehabilitation program;
- D. promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if it or any of its employees has observed the violation or otherwise has reliable information that a violation has occurred; and
- E. notify employees that drugs and alcohol abuse are banned in the workplace,

impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol free workplace.

### **ARTICLE XXVIII**

### **OWNERSHIP OF DOCUMENTS AND MATERIALS**

A. The FIRM agrees that all documents and materials in FIRM's possession in any format or medium, and drafts of and forms for such documents, prepared by or for the FIRM under the terms of this Contract and/or any issued Task Order (the "Files") shall at any time during the performance of the services be made available to the Attorney General, the Contract Officer and/or the appropriate Task Order Officer upon request and shall become and remain the property of the OAG upon termination or completion of the services. The OAG shall have the right to use same without restriction or limitation and without compensation to the FIRM other than that provided in this Contract.

B. Immediately upon termination or expiration of an issued Task Order and/or this Contract, the Firm shall deliver the Files to the Contract Officer and/or the appropriate Task Order Officer or to a location within the State designated by the Contract Officer and/or the appropriate Task Order Officer. The FIRM shall have the right to retain copies of those portions of the Files that the Firm reasonably requires for professional liability purposes.

### **ARTICLE XXIX**

### **PROCUREMENT REGULATIONS**

This Contract is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or the State procurement regulations set forth in COMAR Title 21.

### **ARTICLE XXX**

### **NO ASSURANCE OF WORK**

The FIRM acknowledges that the Attorney General may award more than one Contract for assistant bond and corporate/transactional counsel. The FIRM further acknowledges that it has received no assurances of any minimum amount or type of work under this Contract. The Contract Officer shall have the sole discretion to determine which contractor shall be assigned to handle a particular case or matter and shall have the further right to assign a particular case to the contractor if the Contract Officer determines such action to be in the best interest of the State and the Institution.

### **ARTICLE XXXI**

### **PRODUCTS AND PROGRESS**

The products of the efforts of the FIRM shall become and remain the property of the OAG. The FIRM will, at all times, keep the Task Order Officers and, if so requested, the Contract Officer, informed of efforts and progress made in the performance of the aforementioned duties, or

any other such duties as may be assigned.

**ARTICLE XXXII**  
**PROPOSAL AFFIDAVIT AND CONFLICT**  
**OF INTEREST AFFIDAVIT**

See Attachments B and C, attached hereto and made a part hereof.

**ARTICLE XXXIII**  
**CONTRACT AFFIDAVIT**

See Attachment F, attached hereto and made a part hereof.

**ARTICLE XXXIV**  
**PRICE PROPOSAL**

See Attachment D, attached hereto and made a part hereof.

**ARTICLE XXXV**  
**WAIVER**

The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by either party.

**ARTICLE XXXVI**  
**NOTICE**

Service of any notice under this Contract shall be complete upon mailing of such notice, mailed through the United States mail, postage prepaid, or hand delivery to the Contract Officer, if such notice is to the Attorney General, with a copy to each Task Order Officer identified in a Task Order issued to the FIRM, or to the person executing this Contract on behalf of the FIRM, if such notice is given to the FIRM. The applicable addresses are:

A. For the Attorney General:

Jeffrey C. Palkovitz,  
Assistant Attorney General  
Senior Counsel for Real Estate  
Educational Affairs Division  
Office of the Attorney General  
200 St. Paul Place, 17<sup>th</sup> Floor  
Baltimore, MD 21202

B. For the FIRM:

**ARTICLE XXXVII**  
**EFFECTIVE DATE**

This Contract shall take effect as of the date stated above, upon approval and execution by the Attorney General, provided it has first been duly executed by the FIRM.

**ARTICLE XXXVIII**  
**INCORPORATION BY REFERENCE**

The covenants, representations, terms and conditions of the Proposal Affidavit and the Contract Affidavit attached hereto, are incorporated by reference and made a part hereof, as if more particularly set forth herein.

(Remainder of page intentionally blank.)

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed the day and year first above written.

ATTEST:

[Name of FIRM]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

By:

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Taxpayer Identification Number)

\_\_\_\_\_  
(Date)

WITNESS:

ATTORNEY GENERAL OF MARYLAND

\_\_\_\_\_  
Brian E. Frosh

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Assistant Attorney General



**Attachment F**  
**Contract Affidavit**

**A. AUTHORIZED REPRESENTATIVE**

**I HEREBY AFFIRM THAT:**

I, \_\_\_\_\_ (print name) possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

The business named above is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland law. I further affirm that the above-named business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_.

### C. FINANCIAL DISCLOSURE AFFIRMATION

#### I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

#### I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Sections 14-101 through 108 of the Election Law Article, Annotated Code of Maryland, which requires that every person who enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

### E. DRUG- AND ALCOHOL-FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

#### I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol, is prohibited in the business's workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a *bona fide* drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
  - (i) The dangers of drug and alcohol abuse in the workplace;
  - (ii) The business's policy of maintaining a drug- and alcohol-free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by section E(2)(b), above;
- (h) Notify its employees in the statement required by section E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than five (5) days after a conviction;
- (i) Notify the procurement officer within ten (10) days after receiving notice under section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within thirty (30) days after receiving notice under section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug- or alcohol-abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a *bona fide* drug- or alcohol-abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug- and alcohol-free workplace through implementation of section E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in section E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments, or terminate the contract for default, under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 2017, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached, remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

## **Attachment G**

### **Sample TASK ORDER**

Date

[Bond and Corporate/Transactional Counsel Firm Name and Address]

RE: Bond and Corporate/Transactional Counsel Contract Task Order re: [client name and description of matter]

Dear \_\_\_\_\_:

I have been designated as the Task Order Officer for the representation described below. On behalf of \_\_\_\_\_ (the "Client"), and in accordance with the Bond and Corporate/Transactional Counsel Contract by and between your firm and the Attorney General of Maryland (the "Contract"), your firm is hereby directed to perform the following task(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

You will also perform such other services as are customarily associated with the above-described task(s).

Your firm will be reimbursed for its services by the Client in strict accordance with Article IV of the Contract. Invoices must be submitted to me at the address shown above. No deviations from the rates specified in the Contract shall be permitted. The [not-to-exceed] amount for this Task Order is \$ \_\_\_\_\_.

This Task Order shall not be deemed a modification of the Contract. By acceptance of this Task Order your firm acknowledges that it has performed an examination of its client list as required by Article XVIII of the Contract, and there are no conflicts of interest in its representation of the Client in this matter.

Sincerely,

Assistant Attorney General

Reviewed and acknowledged by Client for  
funding availability:

Name:

Title: